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Docket No. 70116/49945

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Cesarczyk, Edward J.

U.S.S.N.: 09/778,125 — Art Unit: 1743

FILED: February 6, 2001 Examiner: L. Alexander

FOR: DIAGNOSTIC TESTING DEVICE AND METHOD OF USE THEREOF

Commissioner for Patents
Washington, D.C. 20231

Sir:

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on August 28, 2002.

Denise A. Rose
DENISE A. ROSE

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REQUEST FOR RECONSIDERATION

In the Office Action dated May 6, 2002, claims 1-25 are pending and rejected.

Applicant requests reconsideration for at least the reasons set forth hereinbelow.

Claims 1-25 are rejected under 35 U.S.C. §102(e) or §103(a) over Bachand et al., Patent Application Publication No. US 2002/0004019 A1. Bachand describes a saliva testing and confirmation device that includes:

- an expressor cup adapted to receive and compress a foam collection swab pressed into the cup;

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- a testing and confirmation platform connected to the expressor cup;
- a test strip in the platform;
- confirmation means in the platform for collecting a portion of the fluid specimen; and
- a channel for connecting the expressor means with the test strip and the confirmation means.

The swab may have a tether 33 threaded through it to facilitate manual handling of the swab.

However, the present invention is directed to a specimen collecting and testing device comprising:

- an elongate, hollow housing having a proximal end and a distal end;
- at least one test membrane or sample collecting strip positioned within the housing, the test membrane carrying diagnostic test chemistry;
- a fluid chamber, for holding specimen, positioned adjacent to the test membrane or sample collecting strip;
- at least one elongate handle member, having a proximal end and a distal end, slidably received in the housing;
- a barrier or compression area on the proximal side of the fluid chamber; and
- a foam member, for collecting specimen, extending from the proximal end of the handle.

A comparison of Bachand and the presently claimed invention shows that Bachand fails to teach or suggest at least the following:

- an **elongate, hollow housing** having a proximal end and a distal end;
- at least one test membrane or sample collecting strip **positioned within the housing**, the test membrane carrying diagnostic test chemistry;
- at least one **elongate handle member**, having a proximal end and a distal end, **slidably received in the housing**.

Even if the examiner contends that Bachand's expressor means 14 is an elongate hollow housing, Bachand fails to teach or suggest at least one test membrane or sample collecting strip **positioned within the housing**. Further, Bachand fails to teach or suggest the claimed **elongate handle member**, having a proximal end and a distal end, **slidably received in the housing**. Even in the embodiment using a rigid handle device(Figs. 9, 10), there is no suggestion for a test membrane positioned in a housing that slidably receives the rigid handle device.

In Bachand, the test platform housing the test strip for any embodiment is clearly not within the housing in which the expressor is compressed to deliver a fluid specimen.

On the contrary, in the present invention, everything is within the housing.

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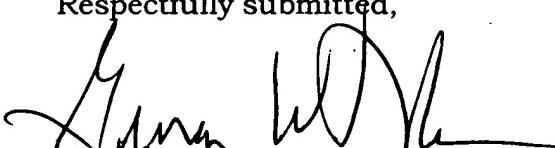
Thus, the device taught by Bachand and the presently claimed invention are substantially different in structure and operation.

Thus, it is not seen how the presently claimed invention is anticipated by, or would have been obvious to one of ordinary skill in the art in view of, Bachand or any combination of the references of record.

It is respectfully submitted that the present application is in condition for allowance. An early reconsideration and notice of allowance are earnestly solicited.

Date: 28 Aug '02

Respectfully submitted,


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PRACTITIONER'S DOCKET N . 70116.49945

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: CESARCZYK, Edward J.

Application No.: 09/778,125 Group No.: 1743

Filed: February 6, 2001 Examiner: L. Alexander

For: DIAGNOSTIC TESTING DEVICE AND METHOD OF USE THEREOF

**Assistant Commissioner for Patents
Washington, D.C. 20231**

CERTIFICATE OF MAILING/TRANSMISSION(37 C.F.R. SECTION 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

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[X] deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

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Date: August 28, 2002

Signature

Denise A. Rose

(type or print name of person certifying)

TRANSMITTAL OF REQUEST FOR RECONSIDERATION

1. Transmitted herewith is a Request for Reconsideration for this application.

STATUS

2. Applicant is

- [X] a small entity. A statement:
[] is attached.
[X] was already filed.
[] other than a small entity.

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EXTENSION OF TERM

NOTE: "Extension of Time in Patent Cases (Supplement Amendments) -- If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.

If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).

NOTE: See 37 C.F.R. Section 1.645 for extensions of time in interference proceedings, and 37 C.F.R. Section 1.550(c) for extensions of time in reexamination proceedings.

- 3.** The proceedings herein are for a patent application and the provisions of 37 C.F.R. Section 1.136 apply.

(complete (a) or (b), as applicable)

- (a) [] Applicant petitions for an extension of time under 37 C.F.R. Section 1.136 (fees: 37 C.F.R. Section 1.17(a)(1)-(4)) for the total number of months checked below:

Extension <u>months</u>	Fee for other than <u>small entity</u>	Fee for <u>small entity</u>
[X] one month	\$ 110.00	\$ 55.00
[] two months	\$ 400.00	\$ 200.00
[] three months	\$ 920.00	\$460.00
[] four months	\$ 1,440.00	\$ 720.00

Fee: \$ 55.00

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- [] An extension for ___ months has already been secured. The fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

OR

- (b) [] Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. Section 1.16(b)-(d)) has been calculated as shown below:

(Col. 1)	(Col. 2)	(Col. 3) SMALL ENTITY			OTHER THAN A SMALL ENTITY		
Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra	Rate	Addit. Fee	OR	Rate	Addit. Fee
Total 25	Minus 25	=	x \$9 =	\$		x \$18 =	\$0
Indep. 2	Minus 3	=	x \$42 =	\$		x \$84 =	\$0
[] First Presentation of Multiple Dependent Claim + \$140 = \$						+ \$280 =	\$
				Total Addit. Fee \$____	OR	Total Addit. Fee \$0	

* If the entry in Col. 1 is less than the entry in Col. 2, write "O" in Col. 3,

** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

WARNING: *"After final rejection or action (Section 1.113) amendments may be made canceling claims or complying with any requirement of form which has been made." 37 C.F.R. Section 1.116(a) (emphasis added).*

(complete (c) or (d), as applicable)

(c) [X] No additional fee for claims is required.

OR

(d) [] Total additional fee for claims required \$ _____.

FEE PAYMENT

5. [X] Attached is a check in the sum of \$ 55.00.

[] Charge Account No. _____ the sum of \$ _____.
A duplicate of this transmittal is attached.



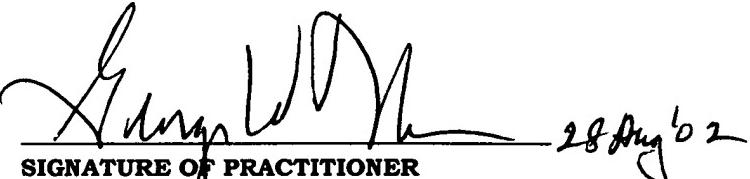
FEE DEFICIENCY

NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).

6. If any additional extension and/or fee is required, charge Account No. 04-1105.

AND/OR

- If any additional fee for claims is required, charge Account No. 04-1105.



28 Aug '02

SIGNATURE OF PRACTITIONER

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